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Attorneys for Defendant
MAZDA MOTOR OF AMERICA, INC.,
d/b/a MAZDA NORTH AMERICAN OPERATIONS

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MEGHAN DECKER, individually, and
on behalf of a class of similarly situated
individuals,

Plaintiffs,

vs.

MAZDA MOTOR OF AMERICA, INC

Defendant.

Case No. SACV11-00873-AG (MLGx)

**[PROPOSED] STIPULATED
PROTECTIVE ORDER**

Disclosure and discovery activity in the above-captioned action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted. Accordingly, plaintiff Meghan Decker and defendant Mazda Motor of America, Inc. d/b/a Mazda North American Operations hereby stipulate to and petition the Court to enter the following Protective Order. The Parties acknowledge that this Protective Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or items that are entitled under the applicable legal principles to protected or confidential treatment.

1 It is hereby ORDERED as follows:

2 TERMS OF PROTECTIVE ORDER

3 **1. General Definitions.** For purposes of this Protective Order, the
4 following terms have the following meaning:

5 a. “Confidential Information” shall mean trade secrets or other
6 confidential research, development, or commercial information pursuant to FRCP
7 26(c)(1)(G) that is contained in Protected Documents.

8 b. “Designating Party” shall mean the Party or non-party designating
9 Discovery Material as “Confidential”.

10 c. “Discovery Materials” shall mean and include, without limitation,
11 Documents, responses to interrogatories, requests for admissions, or other discovery
12 requests, physical objects, samples, CD-ROMs, tapes or other items, deposition
13 transcripts and exhibits thereto, and information provided by or on behalf of the
14 Parties or any non-party witness pursuant to subpoena or otherwise in the course of
15 discovery.

16 d. “Document” shall mean and include, without limitation, all
17 written material, videotapes, and all other tangible items, produced in whatever
18 format (e.g., hard copy, electronic, digital, etc.) and on whatever media (e.g., hard
19 copy, videotape, computer diskette, CD-ROM, DVD, hard drive or otherwise)
20 defined as broadly as permitted under FRCP 34.

21 e. “Party” or “Parties” shall mean and include the parties to this
22 litigation.

23 f. “Pleadings” shall mean and include, without limitation, all papers,
24 motions, briefs, affidavits, declarations, exhibits, etc., filed with the Court.

25 g. “Protected Document” shall mean any document to be produced in
26 this litigation which contains Confidential Information.

1 **2. Designating Confidential Information.**

2 a. All designations of Confidential Information shall be made in
3 good faith by the Designating Party and made at the time of disclosure, production, or
4 tender.

5 b. The designation of Confidential Information may be made by
6 marking or placing the applicable notice "Subject to Protective Order,"
7 "Confidential," or substantially similar notice, on the Document, or, where a copy of
8 the original Document is to be produced, on that copy.

9 c. Any Document or any information designated as "Subject to
10 Protective Order," "Confidential," or similar language in accordance with the
11 provisions of this Protective Order shall only be used, shown or disclosed as provided
12 in this Protective Order.

13 d. The burden of proving that a Protected Document contains
14 Confidential Information is on the Designating Party. Prior to designating any
15 material as "Confidential," the Designating Party must make a bona fide
16 determination that the material is, in fact, a trade secret or other confidential research,
17 development, or commercial information pursuant to FRCP 26(c)(1)(G).

18 e. If a Party disagrees with the "Confidential" designation of any
19 Protected Document, the party will so notify the Designating Party in writing.
20 Counsel shall confer in good faith in an effort to resolve any dispute concerning such
21 designation or redaction. If the objection cannot be resolved by agreement within ten
22 (10) business days of the date of service of the written objection, the Designating
23 Party shall move the Court to confirm the confidentiality designation or redaction.
24 Any opposition to such motion shall be filed within ten (10) business days of the
25 filing of such motion. In the event that a motion to confirm a confidentiality
26 designation is made in a timely manner, the Document or information whose
27 designation or redaction is objected to shall continue to be treated as "Confidential,"
28 as applicable, until the motion has been decided by Court. In the event that a motion

1 to confirm a confidentiality designation is denied, the Designating Party shall cause
 2 the confidentiality legend or redaction to be removed from such documents within ten
 3 (10) business days following entry of the Court's order.

4 **3. Use and Disclosure of Protected Documents.**

5 a. Protected Documents and any copies thereof received pursuant to
 6 this Protective Order shall be maintained as "Confidential" by the receiving party,
 7 his/her attorney, other representatives, and expert witnesses, and shall be used only
 8 for purposes of this action, only, subject to the limitations set forth herein. The
 9 persons or entities identified in Paragraph 3(b)(ii)-(ix) below, to whom Protected
 10 Documents are disclosed pursuant to this Protective Order, shall keep all such
 11 materials and information, and any copies, notes, extracts, summaries, or descriptions
 12 of such material, within their exclusive possession and control, shall treat all such
 13 copies, notes, extracts, summaries, or descriptions of the Protected Documents or any
 14 portion thereof as "Confidential," shall take all necessary and prudent measures to
 15 maintain the confidentiality of all such materials or information, and shall not
 16 disseminate such Protected Documents other than in accordance with this Protective
 17 Order.

18 b. Protected Documents shall be disclosed only to "Qualified
 19 Persons." Qualified Persons are limited to:

- 20 i. The Court and its personnel;
- 21 ii. The Parties to this litigation;
- 22 iii. Counsel of record in this litigation, as well as paralegals,
 23 technical, administrative, and clerical employees working under the direct
 24 supervision of such counsel;
- 25 iv. Experts and non-attorney consultants retained by the Parties
 26 for the preparation or trial of this case, provided that no disclosure shall be made to
 27 any expert or consultant who is currently employed by an automobile manufacturer
 28 competitor of Mazda;

1 v. A potential, anticipated or actual fact witness whom counsel
2 for the disclosing Party believes in good faith is likely to have knowledge pertaining
3 to the content of the Protected Documents to be disclosed;

4 vi. The author(s) or any recipient of the Document;

5 vii. Litigation support consultants and vendors who provide
6 litigation support services (e.g., photocopying, electronic discovery, videotaping,
7 translating, preparing exhibits or demonstrations, etc.);

8 viii. Any person expressly named and agreed to in writing by the
9 Parties or by further order of the Court; and

10 ix. Court reporters recording and/or transcribing deposition
11 testimony.

12 c. While the Parties may provide Protected Documents in
13 accordance with the provisions of this Protective Order in an electronic form, such
14 Documents may not be posted on any website or internet accessible document
15 repository that is accessible to anyone other than “Qualified Persons” listed above.

16 d. All persons described in Paragraph 3(b)(ii)-(ix) above shall not
17 under any circumstance sell, offer for sale, advertise, or publicize either the Protected
18 Documents and the Confidential Information contained therein or the fact that such
19 persons have obtained Protected Documents and Confidential Information.

20 e. Pursuant to Paragraph 4(b)(iv) above, for those persons designated
21 as experts, each such expert shall not have access to Protected Documents without
22 having first read, acknowledged, and agreed to be bound by this Protective Order by
23 executing the Agreement to be Bound attached as Exhibit A (the “Agreement to be
24 Bound”).

25 4. Each Party’s counsel shall retain each such executed Agreement to be
26 Bound and shall keep a list identifying: (a) all persons to whom Protected
27 Documents have been disclosed; and (b) all Protected Documents disclosed to such
28 persons. Each such executed Agreement to be Bound shall not be made available to

1 the Designating Party during the pendency of the litigation but shall only be available
2 for an in camera inspection by the Court if good cause for review is demonstrated by
3 the Designated Party. However, each such executed Agreement to be Bound and list
4 shall be submitted to counsel for the Designated Party at the termination of this
5 litigation.

6 **5. Designation of Deposition Testimony.**

7 a. Deposition testimony that counsel for the Party or non-party
8 witness tendering such testimony, in good faith, believes refers to Protected
9 Documents or information obtained therefrom shall be designated as “Confidential,”
10 as applicable, by such counsel by making a statement on the record for inclusion in
11 the deposition transcript or, in writing, within thirty (30) calendar days after receipt of
12 the transcript.

13 b. When a Protected Document or information obtained therefrom is
14 designated as “Confidential” in a deposition transcript, the counsel making the
15 designation shall instruct the reporter to imprint the legend “THIS TRANSCRIPT
16 CONTAINS CONFIDENTIAL INFORMATION” on the cover page of the transcript
17 and to include, at the front of the transcript, a page identifying all pages and lines
18 designated “Confidential” in the transcript.

19 c. To the extent that Protected Documents or information obtained
20 therefrom are used in the taking of depositions and/or used as exhibits at trial, such
21 Document or information shall remain subject to the provisions of this Protective
22 Order, along with the transcript pages of the deposition testimony and/or trial
23 testimony dealing with the Protected Documents or information.

24 d. Any court reporter or transcriber who reports or transcribes
25 deposition testimony in this action shall agree that all Confidential Information
26 designated as such under this Protective Order shall remain “Confidential” and shall
27 not be disclosed by them, except pursuant to the terms of this Protective Order, and
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1 that any notes or transcriptions of such testimony (and any accompanying exhibits)
2 will be retained by the reporter or delivered to counsel of record.

3 **6. Filing Under Seal.**

4 **a. If any party seeks to file or lodge with the Court any portion**
5 **of any Protected Document or information taken from any Protected Document,**
6 **such material shall be submitted to the Court with an application to file under**
7 **seal in accordance with this Court's Civil Local Rule 79-5.1.**

8 **b.** Within ninety (90) days after the conclusion of this case, counsel
9 for the Party who has received Protected Documents shall either: (a) return to the
10 Designating Party the Protected Documents, including any Document which any such
11 Party disclosed to any Qualified Person, or (b) securely destroy the Protected
12 Documents, including any Documents which any such Party disclosed any Qualified
13 Person, and certify in writing such destruction to the Designating Party.

14 **7. Inadvertent Production.**

15 Inadvertent or unintentional production of Documents or information
16 containing information which should have been designated as "Confidential" shall
17 not be deemed a waiver in whole or in part of the Party's claims of confidentiality. If
18 a Party has inadvertently or unintentionally produced information subject to a claim
19 of immunity or privilege, upon written request made by the producing Party within
20 twenty-one (21) days of discovery, all copies of such information shall be returned to
21 the producing Party within seven (7) business days of such request unless the
22 receiving Party intends to challenge the producing Party's assertion of privilege or
23 immunity. If a receiving Party objects to the return to of such information within the
24 seven (7) business day period described above, the producing Party may move the
25 Court for an order compelling the return of such information. Pending the Court's
26 ruling, a receiving Party may retain the inadvertently or unintentionally produced
27 documents in a sealed envelope and shall not make any use of such information.

1 **8. Right to Use Own Information.**

2 Nothing in this Protective Order shall limit any Party's right to disclose to any
3 person, or use for any purpose, its own information and Documents.

4 **9. Subpoena or Order.**

5 If a Party is served with a subpoena or an order issued in other litigation that
6 would compel disclosure of any information or items designated in this action as
7 "Confidential," counsel for the receiving Party must promptly notify counsel for the
8 Designating Party in writing, and in no event, more than five (5) business days after
9 receiving the subpoena or order. Counsel for the receiving Party also must inform, in
10 writing, the Party who caused the subpoena or order to issue in the other litigation
11 that some or all the material covered by the subpoena or order is the subject of this
12 Protective Order.

13 **10. Modification.**

14 This Protective Order may not be waived, modified, abandoned or terminated,
15 in whole or part, except by an instrument in writing signed by the Parties or pursuant
16 to further Court Order. If any provision of this Protective Order shall be held invalid
17 for any reason whatsoever, the remaining provisions shall not be affected thereby.

18 **11. Duration.**

19 a. After termination of this litigation, the provisions of this
20 Protective Order shall continue to be binding. This Court retains and shall have
21 jurisdiction over the Parties for enforcement of the provisions of this Protective Order
22 following termination of this litigation.

23 b. This Protective Order shall be binding upon the parties hereto,
24 upon their attorneys, and upon the Parties' and their attorneys' successors, executors,
25 personal representatives, administrators, heirs, legal representatives, assigns,
26 subsidiaries, divisions, employees, agents, independent contractors, or other persons
27 or organizations over which they have control.

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD:

2
3 Dated: May 29, 2012

DYKEMA GOSSETT LLP

4
5 By: _____
John M. Thomas
6 Attorneys for Defendant
Mazda Motor of America, Inc., d/b/a
7 Mazda North American Operations

8 Dated: May 29, 2012

KNAPP, PETERSEN & CLARKE

9
10 By: _____
11 Stephen M. Harris
Attorneys for Plaintiff

12 Dated: May 29, 2012

THE LAW OFFICE OF ROBERT L. STARR

13
14 By: _____
15 Robert L. Starr
16 Attorneys for Plaintiff

17 Based on the stipulation of the parties and for good cause shown, IT IS SO
18 ORDERED:

19
20 Dated: May 31, 2012



21
22 _____
23 MARC L. GOLDMAN
24 United States Magistrate Judge
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